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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,429	06/24/2003	Zifei Wang	A03P1031	4308
36802	7590	05/23/2006	EXAMINER	
PACESETTER, INC. 15900 VALLEY VIEW COURT SYLMAR, CA 91392-9221			KAHELIN, MICHAEL WILLIAM	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,429	WANG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Kahelin	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's response to the "request for information" filed 4/4/2006 has been fully considered. Although Applicant did not dispute the Examiner's definition of a T-wave, there was no positive indication of where, specifically, Applicant considers the T-wave to end. Also, in the final paragraph on page 8 of the last communication, Applicant indicated that, while not required, a portion of the T-wave *may* be used in the energy calculation. This means that the claims read on any prior art method that utilizes the T-wave to detect ischemia because this falls under the scope of "a T-wave may be included".
2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:  

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 1-20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not enable one skilled in the art to define an interval that is both subsequent to and may include the T-wave.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the identified segment can be both subsequent to and may include the T-wave. Under its broadest reasonable interpretation, Examiner is considering the segment to encompass a segment that is either subsequent to *or* including the T-wave.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 13, 15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Stadler et al. (US 6,381,493, hereinafter "Stadler").

9. In regards to claim 1 and 18, Stadler et al. disclose an implantable medical device comprising receiving electrical signals from the heart with a sensing circuit, identifying segments of the cardiac signal subsequent to ventricular repolarization (Fig.

5; please note that these points are part of the T-wave, thus subsequent to repolarization, based on the interpretation above), and detects ischemia based on an examination of the segments (Fig. 6, element 6). Please see the cited Verrier (US 5,148,812) reference for evidence that the T-wave comprises the ST segment (col. 1, line 56) and that voltage (potential energy) is an energy value.

10. In regards to claim 2, Stadler et al. disclose that ischemia is detected to predict myocardial infarction (col. 1, line 45).

11. In regards to claims 13, 15, and 17, a warning signal is provided to an external device to indicate ischemia (Fig. 1A and col. 8, line 55).

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stadler. Stadler discloses the essential features of the claimed invention except for a warning comprising a subcutaneous electrical notification signal. Subcutaneous "tickle" warnings are well known in the implantable device art to provide a notification signal to a patient with a totally implanted system. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stadler's invention by providing a "tickle" warning to provide a notification signal to a patient with a totally implanted system.

15. Claims 3, 4, 7, 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stadler in view of Lerner (US 5,213,106, hereinafter "Lerner"). Stadler discloses the essential features of the claimed invention, including the following:

16. In regards to claims 4, 16, 19 and 20, Stadler discloses utilizing a high-pass filtered signal (col. 25, line 41), deriving an energy value (potential energy) following each ventricular repolarization with a running average (col. 26, line 3), inputting a first and second threshold value (col. 26, line 35), and detecting a sharp falling edge based on the average value, running average and thresholds (col. 26, line 15). Please note that the examiner interprets a band-pass filter as a high-pass and low-pass filter.

Stadler does not disclose that the energy value is a total amount of energy in each segment or detecting a sharp falling edge. Lerner teaches of determining ischemia based on total energy values and a sharp falling edge ("deeply negative") to accurately

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detect ischemia based on ECG data (col. 5, line 42). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stadler's invention by determining ischemia based on total energy values and a sharp falling edge to accurately detect ischemia based on ECG data.

17. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stadler in view of Lerner, as applied to claim 4 above, and further in view of Berger (US 5,560,368, hereinafter "Berger"). Stadler's modified invention discloses the essential features of the claimed invention except for a high-pass filter with a frequency in the range 0.1 to 5.0 Hz or at least 1.0 Hz. Berger teaches of a method of measuring ECG intervals using a filter with a high-pass cutoff frequency of about 1 Hz (col. 10, line 48) to preserve the repolarization signal. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to provide a cutoff frequency of 1 Hz to Stadler's modified invention to preserve the repolarization signal.

18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stadler in view of Lerner, as applied to claim 7 above, and further in view of Fischell et al. (US 6,609,023, hereinafter "Fischell"). Stadler's modified invention discloses the essential features of the claimed invention except for defining a start time of  $S1 + S\_to\_S\_Interval / 4$  and an end time of  $S2 - S\_to\_S\_Interval / 4$ . Fischell teaches of defining the ST interval based on R-R intervals to ensure that an accurate T-wave signal is acquired, regardless of heart rate (col. 21, line 41). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to define a start time of  $S1 + S\_to\_S\_Interval / 4$  and an end time of  $S2 - S\_to\_S\_Interval / 4$  for Stadler's invention to

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detect the T-wave from the easily recognizable R-wave. Furthermore, it is well known in the art to acquire desired features based on the R-wave or R-R intervals due to the ease of recognition of the R-wave.

19. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stadler in view of Lerner, as applied to claim 7 above, and further in view of Park et al. (US 2003/0153956, hereinafter "Park" ). Stadler's modified invention discloses the essential features of the claimed invention except for deriving a running average using the equation as claimed. Park teaches of a digital smoothing method using the claimed equation to provide a less noisy signal that can be filtered using bit-shifting instead of arithmetic (par. 0083). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to further modify Stadler's invention by deriving a running average using the equation as claimed to provide a less noisy signal that can be filtered using bit-shifting instead of arithmetic.

20. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stadler in view of Lerner, as applied to claim 4 above, and further in view of Beker et al. (US 2003/0208129, hereinafter "Beker"). Stadler's modified invention discloses the essential features of the claimed invention except for determining whether the energy integral minus the running average exceeds the first threshold or the running average exceeds the second threshold and determining whether this value is below both thresholds. Beker teaches of a method of signal analysis for ECG signals comprising comparing a current wave with a reference wave (fig. 7, element 116), comparing averaged waves to a threshold (fig. 7, element 124), taking action if both

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thresholds are exceeded (fig. 7, element 126) and ending if neither threshold is exceeded (fig. 7) to ensure that both individual measurements and average measurements can induce the active state. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Stadler's invention by determining whether the energy integral minus the running average exceeds the first threshold or the running average exceeds the second threshold and determine whether this value is below both thresholds to ensure that both individual measurements and average measurements can induce the active state.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWK



5/15/06

GEORGE R. EVANISKO  
PRIMARY EXAMINER

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